

LEGISLATIVE BILL 802

Approved by the Governor March 24, 1999

Introduced by Government, Military and Veterans Affairs Committee:
Schimek, 27, Chairperson; Cudaback, 36; Janssen, 15; Kremer, 34;
Quandahl, 31; Schmitt, 41; Smith, 48; Vrtiska, 1

AN ACT relating to elections; to amend sections 32-226, 32-231 to 32-233, 32-235 to 32-240, 32-515, 32-606, 32-608, 32-622, 32-916, 32-947, 32-1022, and 32-1027, Reissue Revised Statutes of Nebraska; to change provisions relating to judges and clerks of election, filing for office, withdrawing a filing for office, and absentee ballot identification envelopes; to provide for district inspectors in certain counties; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 32-226, Reissue Revised Statutes of Nebraska, is amended to read:

32-226. At the discretion of the precinct or district inspector, any clerk of election may perform the duties of a judge of election ~~except the initialing of ballots~~ and any judge of election may perform the duties of a clerk of election. The election commissioner may excuse the two clerks of election from serving at any election, and the judges of election shall perform such duties without additional compensation. The precinct inspector may perform the duties of a judge or clerk of election when authorized by the election commissioner.

Sec. 2. Section 32-231, Reissue Revised Statutes of Nebraska, is amended to read:

32-231. (1) Each judge and clerk of election appointed pursuant to section 32-230 shall ~~(1)~~ (a) be of good repute and character and able to read and write the English language, ~~(2)~~ (b) reside in the precinct in which he or she is to serve unless necessity demands that personnel be appointed from another precinct, ~~(3)~~ (c) be a registered voter, and ~~(4)~~ (d) serve for a term of two years or until judges and clerks of election are appointed for the next primary election. No candidate at an election shall be eligible to serve as a judge or clerk of election at the same election other than a candidate for a delegate to a county, state, or national political party convention.

(2) The county clerk may appoint district inspectors to aid the county clerk in the performance of his or her duties and supervise a group of precincts on election day. A district inspector shall meet the requirements for judges and clerks of election as provided in subsection (1) of this section, shall oversee the procedures of a group of polling places, and shall act as the personal agent and deputy of the county clerk. The district inspector shall ensure that the Election Act is uniformly enforced at the polling places assigned to him or her and perform tasks assigned by the county clerk. The district inspector may perform all of the duties required of a judge or clerk of election or a precinct inspector.

Sec. 3. Section 32-232, Reissue Revised Statutes of Nebraska, is amended to read:

32-232. (1) Any clerk of election may perform the duties of a judge of election, ~~except the initialing of ballots~~, and any judge of election may perform the duties of a clerk of election. The county clerk may excuse two clerks of election from serving at any election, and the judges of election shall perform such duties without additional compensation.

(2) The county clerk shall designate one of the members of the receiving board as a messenger. The messenger shall receive from the county clerk the ballots and other equipment necessary for holding the election in the precinct for which he or she is a judge or clerk and shall deliver them to the polling place in his or her precinct at least one hour before the time provided by section 32-908 for opening the polls. The messenger shall return the ballots and other equipment to the county clerk as soon as possible after the votes are counted. In precincts which have a counting board, a messenger shall be designated by the county clerk from the members of the counting board to return the ballots and equipment to the county clerk.

Sec. 4. Section 32-233, Reissue Revised Statutes of Nebraska, is amended to read:

32-233. Judges and clerks of election shall receive wages at the minimum rate set in section 48-1203 for each hour of service rendered, except that in precincts having a counting board, no member of the receiving board

shall receive pay for more than fifteen hours of service. District inspectors shall be paid the wages at such minimum rate plus an additional sixty cents per hour for the hours they serve. Each judge or clerk of election and each district inspector shall sign an affidavit stating the number of hours he or she worked. Each messenger appointed pursuant to section 32-232 shall receive five dollars plus mileage at the rate provided in section 81-1176.

Sec. 5. Section 32-235, Reissue Revised Statutes of Nebraska, is amended to read:

32-235. The county clerk shall, by mail, notify judges and clerks of election and district inspectors of their appointment. The notice shall inform the appointee of his or her appointment and of the date and time he or she is required to report to the office of the county clerk or the polling place. The notice shall be mailed at least fifteen days prior to the election. The county clerk shall order the members of the receiving board and the members of the counting board to appear at their respective polling place on the day and at the hour specified in the notice of appointment.

Sec. 6. Section 32-236, Reissue Revised Statutes of Nebraska, is amended to read:

32-236. Each judge and clerk of election appointed pursuant to subsection (4) of section 32-230 and each district inspector appointed pursuant to subsection (2) of section 32-231 shall serve at all elections, except city and village elections, held in the county or precinct during his or her two-year term unless excused. A violation of this section by an appointee is a Class V misdemeanor. The county clerk shall submit the names of appointees violating this section to the local law enforcement agency for citation pursuant to sections 32-1549 and 32-1550.

Sec. 7. Section 32-237, Reissue Revised Statutes of Nebraska, is amended to read:

32-237. If any judge or clerk of election or inspector fails to appear at the appropriate hour, the inspector or remaining judges and clerks shall notify the county clerk, select a registered voter to serve in place of the absent person, and proceed to conduct the election. The registered voter shall be affiliated with the same political party as the absent person if possible.

Sec. 8. Section 32-238, Reissue Revised Statutes of Nebraska, is amended to read:

32-238. Before entering upon his or her duties, each judge or clerk of election and each inspector shall sign an oath to be returned to the county clerk after the polls close. The oath need not be taken and signed before a person authorized to administer oaths. If the oath is printed in the sign-in register, the signing of the sign-in register shall be complete and sufficient compliance with the requirements of section 11-101.01. The form of the oath shall be as provided in such section.

Sec. 9. Section 32-239, Reissue Revised Statutes of Nebraska, is amended to read:

32-239. All vacancies of judges and clerks of election appointed pursuant to section 32-230 and district inspectors appointed pursuant to subsection (2) of section 32-231 shall be filled as nearly as possible in the manner in which the original appointments were made. At least fifteen days prior to any election, the county clerk shall review the list of district inspectors and the list of judges and clerks of election in the precincts in which the election is to occur and fill any vacancies. When a district inspector or judge or clerk of election is a candidate for an office to be voted upon at the election, except for a candidate for a delegate to a county, state, or national political party convention, his or her position as a district inspector, judge, or clerk shall be vacant.

Sec. 10. Section 32-240, Reissue Revised Statutes of Nebraska, is amended to read:

32-240. Any person who is appointed to serve as a judge or clerk of election or district inspector may, at any time before election day, be excused by the county clerk from serving in such capacity by reason of his or her own sickness, the serious illness of any member of his or her family, or unavoidable absence from the county on election day.

Sec. 11. Section 32-515, Reissue Revised Statutes of Nebraska, is amended to read:

32-515. Candidates for the boards of educational service units shall be elected to represent the geographical boundaries of the educational service unit as provided in section 79-1217. Successors to the members initially appointed to the board shall be elected for terms of four years. County candidates shall file their written applications with the election commissioner or county clerk no later than ~~August 1~~ prior to the statewide general election the deadline prescribed in subsection (2) of section 32-606.

Candidates for the position of members at large shall file their written applications with the Secretary of State no later than ~~August 1 prior to the statewide general election~~ the deadline prescribed in subsection (2) of section 32-606. Candidates for the board of educational service units shall meet the qualifications found in such section. Board members shall be elected on the nonpartisan ballot.

Sec. 12. Section 32-606, Reissue Revised Statutes of Nebraska, is amended to read:

32-606. (1) Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is ~~the~~ an incumbent, the deadline for filing the candidate filing form shall be February 15 prior to the date of the primary election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. All other candidates shall file for office by March 1 prior to the date of the primary election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(2) Any candidate for a township office in a county under township organization, the board of trustees of a village, the board of directors of a reclamation district, the county weed district board, the board of directors of a public power district receiving annual gross revenue of less than forty million dollars, the school board of a Class II school district, or the board of an educational service unit may place his or her name on the general election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is an incumbent, the deadline for filing the candidate filing form shall be July 15 prior to the date of the general election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after July 15 of that election year. All other candidates shall file for office by August 1 prior to the date of the general election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(3) Any city having a home rule charter may provide for filing deadlines for any person desiring to be a candidate for the office of council member or mayor.

Sec. 13. Section 32-608, Reissue Revised Statutes of Nebraska, is amended to read:

32-608. (1) Except as provided in subsection (4) or (5) of this section, a filing fee shall be paid by or on behalf of each candidate prior to filing for office. The filing fee shall be paid to the county treasurer or, in the case of a city or village office, the city or village treasurer of the county, city, or village in which the candidate resides or, if the candidate does not reside at the time of filing in the county in which such candidate is seeking office, in the county where the office is sought. The fee shall be placed in the general fund of the county, city, or village. No candidate filing forms shall be filed until the proper treasurer's receipt showing the payment of such filing fee is presented to the filing officer. On the day of the filing deadline, the county, city, or village treasurer's office shall remain open to receive filing fees until the hour of the filing deadline.

(2) ~~Except as provided in subsection (4) or (5) notwithstanding the provisions of subsection (4) of this section,~~ the filing fees shall be as follows:

(a) For the office of United States Senator, state officers, including members of the Legislature, Representatives in Congress, county officers including county superintendents of schools, and city or village officers, except the mayor or council members of cities having a home rule charter, a sum equal to one percent of the annual salary such candidate will receive if he or she is elected and qualifies for the office for which he or she files as a candidate;

(b) For directors of public power and irrigation districts in districts receiving annual gross revenue of forty million dollars or more, twenty-five dollars, and in districts receiving annual gross revenue of less

than forty million dollars, ten dollars;

(c) For directors of reclamation districts, ten dollars; and

(d) For Regents of the University of Nebraska, members of the State Board of Education, and directors of metropolitan utilities districts, twenty-five dollars.

(3) All declared write-in candidates shall pay the filing fees that are required for the office at the time that they present the write-in affidavit to the filing officer. Any undeclared write-in candidate who is nominated or elected by write-in votes shall pay the filing fee required for the office within ten days after the canvass of votes by the county canvassing board and shall file the receipt with the person issuing the certificate of nomination or the certificate of election prior to the certificate being issued.

(4) No filing fee shall be required for any candidate filing for an office in which a per diem is paid rather than a salary or for which there is a salary of less than five hundred dollars per year. No filing fee shall be required for any candidate for membership on a school board, on the board of an educational service unit, on the board of governors of a community college area, on the board of directors of a natural resources district, or on the board of trustees of a sanitary and improvement district.

(5) No filing fee shall be required of any candidate completing an affidavit requesting to file for elective office in forma pauperis. A pauper shall mean a person whose income and other resources for maintenance are found under assistance standards to be insufficient for meeting the cost of his or her requirements and whose reserve of cash or other available resources does not exceed the maximum available resources that an eligible individual may own. Available resources shall include every type of property or interest in property that an individual owns and may convert into cash except:

(a) Real property used as a home;

(b) Household goods of a moderate value used in the home; and

(c) Assets to a maximum value of three thousand dollars used by a recipient in a planned effort directed towards self-support.

(6) If any candidate dies prior to an election, the spouse of the candidate may file a claim for refund of the filing fee with the proper governing body prior to the date of the election. Upon approval of the claim by the proper governing body, the filing fee shall be refunded.

Sec. 14. Section 32-622, Reissue Revised Statutes of Nebraska, is amended to read:

32-622. (1) If any person who has filed for elective office pursuant to subsection (1) of section 32-606 notifies the filing officer in writing duly acknowledged by March 1 before the primary election that he or she declines to be a candidate, the name shall not be printed on the primary election ballot, but no declination shall be effective after such date. A filing of nomination pursuant to section 32-611 shall extend the time for declination until March 6 before the primary election.

(2) If any person who has filed for elective office pursuant to subsection (2) of section 32-606 notifies the filing officer in writing duly acknowledged by August 1 before the general election that he or she declines to be a candidate, the name shall not be printed on the general election ballot, but no declination shall be effective after such date.

(3) Any election commissioner or county clerk receiving notice of declination for a candidate who originally filed with the Secretary of State shall immediately notify the office of the Secretary of State by telephone and forward the declination statement.

Sec. 15. Section 32-916, Reissue Revised Statutes of Nebraska, is amended to read:

32-916. (1) Two judges of election or a precinct or district inspector and a judge of election shall affix their initials to the official ballots and ballot jackets if any. Before issuing any punch card ballot, the card shall be stamped with a rubber stamp designating that the ballot card is an official ballot and the county in which the card is to be used. The stamp shall be placed on the portion of the ballot card which carries the ballot position numbers and on the stub which is to be reviewed by a judge of election. The stamp shall be furnished to each receiving board by the election commissioner or county clerk. The judge of election shall deliver a ballot to each registered voter after complying with section 32-914.

(2) After voting the ballot, the registered voter shall, as directed by the judge of election, fold his or her ballot or place the ballot in the ballot envelope, jacket, or sleeve so as to conceal the voting marks and to expose the initials ~~of the judges of election~~ affixed on the ballot. The registered voter shall, without delay and without exposing the voting marks upon the ballot, deliver the ballot to the judge of election before leaving

the enclosure in which the voting booths or compartments are placed.

(3) The judge of election shall, without exposing the voting marks on the ballot, approve the exposed initials ~~of the two judges of election or the precinct or district inspector and judge of election~~ upon the ballot and deposit the ballot in the ballot box in the presence of the registered voter. When punch card ballots are used, the judge of election shall inspect the official initials on the ballot jacket and the official stamp on the stub of the official ballot card which is inside the ballot jacket and shall remove the stub before depositing the ballot in the ballot box. No judge of election shall deposit any ballot in a ballot box unless the ballot has been identified as having the appropriate initials. ~~of two of the judges of election or a precinct or district inspector and judge of election.~~ No judge of election shall deposit any ballot jacket in any ballot box unless the ballot jacket is properly identified. Any ballot or ballot jacket not properly identified shall be rejected in the presence of the voter, the judge of election shall make a notation on the ballot and the ballot jacket Rejected, not properly identified, and another ballot shall be issued to the voter and the voter shall then be permitted to cast his or her ballot. If the ballot and ballot jacket are in order, the judge shall deposit the ballot and ballot jacket in the ballot box in the presence of the voter and the voter shall promptly leave the polling place. The judges of election shall maintain the secrecy of the rejected ballots and shall cause the rejected ballots to be made up in a sealed packet. The judges of election shall endorse the packet with the words Rejected Ballots and the designation of the precinct. The judges of election shall sign the endorsement label and shall return the packet to the election commissioner or county clerk with a statement by the judges of election showing the number of ballots rejected.

(4) Upon receiving a conditional ballot as provided in section 32-915, the judge of election shall copy the information from the change of address form onto the envelope in which the ballot is enclosed or attach the form to the envelope, attach the statement required by section 32-915 if not contained on the envelope, and place the entire envelope into the ballot box.

Sec. 16. Section 32-947, Reissue Revised Statutes of Nebraska, is amended to read:

32-947. (1) Upon receipt of an application or other request for an absentee ballot, the election commissioner or county clerk shall deliver to the applicant in person or by mail, postage paid, an absentee ballot if he or she finds that the applicant is a registered voter and is entitled to vote an absentee ballot as applied for or requested. The election commissioner or county clerk or any employee of the election commissioner or county clerk shall write his or her customary signature on the absentee ballot.

(2) An unsealed identification envelope shall be delivered with the ballot, and upon the ~~face~~ back of the envelope shall be printed a form substantially as follows:

ABSENTEE VOTER'S IDENTIFICATION

I, the undersigned voter, declare ~~under penalty of election falsification~~ that the enclosed ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked, enclosed in the identification envelope, and sealed in such envelope.

My voting residence in Nebraska is, (street and number or rural route and number) of, (city, village, or township) Nebraska. I am a registered voter of the State of Nebraska.

~~(Applicant must check the true statement concerning his or her reason for voting an absentee ballot.)~~

~~...I will be absent from the county at the time of the election.~~

~~...I am physically unable to go to the polling place.~~

~~...I will be unable to go to the polling place on the day of election because of hospitalization.~~

~~...I cannot go to the polling place on the day of the election because of the tenets of my religion.~~

~~...I will be unable to go to the polling place on the day of election because of confinement by public order.~~

~~...I am legally blind.~~

~~...I have requested that my residence address remain confidential pursuant to law.~~

~~...I am unable to go to the precinct polling place during the hours the precinct polling place is open.~~

~~...I am a Nebraska resident and (a) a member of the armed forces of the United States or a spouse or dependent of such member, (b) a citizen temporarily residing outside of the United States or of the District of Columbia, or (c) an overseas citizen.~~

The primary election ballot, if any, within this envelope is a

primary election ballot of the party.

Ballots contained in this envelope are for the (primary, general, or special) election to be held on the day of 19.. 20.. .

I request absentee general election ballots be sent to me yes no.

I hereby declare, under penalty of election falsification, that the statements above are true to the best of my knowledge.

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

.....
(Signature of Voter)

(3) If the absentee ballot and identification envelope are delivered by mail or picked up at the office to be returned by mail, the election commissioner or county clerk shall include with the ballot and the identification envelope an unsealed return envelope upon the face of which shall be printed the official title and post office address of the election commissioner or county clerk. The return envelope shall be of such size that the identification envelope can be conveniently placed within it for returning such identification envelope. The election commissioner or county clerk shall include written instructions on marking and returning the absentee ballot, including notice that failure to sign the identification envelope and include his or her address on the identification envelope will result in the ballot not being counted.

Sec. 17. Section 32-1022, Reissue Revised Statutes of Nebraska, is amended to read:

32-1022. Before counting any votes, the counting board shall examine each ballot. If any ballot is not appropriately initialed ~~by two judges of election or a precinct or district inspector and a judge of election~~ as provided in section 32-916, the counting board shall reject the ballot and make the following notation on the ballot: Rejected, not properly initialed.

Sec. 18. Section 32-1027, Reissue Revised Statutes of Nebraska, is amended to read:

32-1027. (1) The election commissioner or county clerk shall appoint two or more registered voters to the absentee ballots counting board. One registered voter shall be appointed from the political party casting the highest number of votes for Governor or for President of the United States in the county in the immediately preceding general election, and one registered voter shall be appointed from the political party casting the next highest vote for such office. The election commissioner or county clerk may appoint additional registered voters to serve on the absentee ballots counting board and may appoint registered voters to serve in case of a vacancy among any of the members of the absentee ballots counting board. Such appointees shall be balanced between the political parties and may include registered voters unaffiliated with any political party. The absentee ballots counting board shall meet as directed by the election commissioner or county clerk.

(2) The absentee ballots counting board shall place all absentee voter identification envelopes in order for counting. The absentee ballots counting board shall compare the voter's name on the identification envelope with the name on the absentee voter's book or with the application for an absentee ballot. If the name on the identification envelope appears to be that of a registered voter to whom an absentee ballot has been issued, the identification envelope shall be accepted for opening without further questioning. In counties using optical scanners, the absentee ballots counting board may, on the day before the election, check the names on the identification envelopes received and open all identification envelopes which are approved, and if the signature of the election commissioner or county clerk or his or her employee is on the ballot, the ballot shall be unfolded, flattened for purposes of using the optical scanner, and placed in a sealed container for counting on election day. In other counties, the absentee ballots counting board ~~shall, on election day may, on the day before the election,~~ check the names on the identification envelopes received ~~on~~ prior to election day. If an identification envelope is accepted for counting, the identification envelope shall be placed in a sealed container for counting on election day. On election day, and ~~open~~ all identification envelopes which have been received and approved on or before election day shall be opened, and if the signature of the election commissioner or county clerk or his or her employee is on the ballot, the ballot shall be placed without unfolding into a ballot box.

(3) The absentee ballots counting board shall reject an absentee voter identification envelope if the signature of the registered voter is missing or if the name and address on the identification envelope do not match

the registered voter's voter registration. If an identification envelope is rejected, the absentee ballots counting board shall not open the identification envelope. If the ballot is rejected after opening the identification envelope because of the absence of the official signature on the ballot, the ballot shall be marked Rejected, no official signature. The absentee ballots counting board shall place the rejected identification envelopes and ballots in a container labeled Rejected Absentee Ballots and seal it.

(4) As soon as all ballots have been placed in the ballot box and rejected identification envelopes or ballots have been sealed in the Rejected Absentee Ballots container, the absentee ballots counting board shall count the absentee ballots the same as all other ballots and an unofficial count shall be released to the election commissioner or county clerk. No results shall be released prior to the closing of the polls on election day.

Sec. 19. Original sections 32-226, 32-231 to 32-233, 32-235 to 32-240, 32-515, 32-606, 32-608, 32-622, 32-916, 32-947, 32-1022, and 32-1027, Reissue Revised Statutes of Nebraska, are repealed.